

January 16, 2009

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Linda Dunham

Date of Filing: January 6, 2009

Case Number: TFA-0286

This Decision concerns an Appeal that was filed by Linda Dunham in response to a determination that was issued to her by the Freedom of Information Act Officer (the FOIA Officer) of the Department of Energy's (DOE) Southwestern Power Administration. In that determination, the FOIA Officer replied to a request for performance ratings of two specified Southwestern Power Administration employees for the fiscal year 2008, which Ms. Dunham submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. The Director released portions of each FY 2008 Annual Summary Rating to Ms. Dunham, but withheld other portions of those documents. This Appeal, if granted, would require that the FOIA Officer release the withheld information.

The FOIA generally requires that documents held by federal agencies be released to the public on request. However, Congress has provided nine exemptions to the FOIA that set forth the types of information that agencies are not required to release. 5 U.S.C. § 552(b)(1)-(9); *see also* 10 C.F.R. § 1004.10(b)(1)-(9).

I. BACKGROUND

In her response to Ms. Dunham's FOIA request, the FOIA Officer released those portions of the Annual Summary Rating documents that contained the name of the employee being rated, the rating period, the code for the organization in which the employee worked, each element on which the employee was rated, and the name and signature of the rating official, the reviewing official, and the employee. The FOIA Officer withheld the value of the rating given for each element, any comments made regarding any such rating, the summary rating based on an aggregation of the ratings for each element, and any recommendation for an award based on the employee's performance. The FOIA Officer's determination indicates that all information deleted from the Annual Summary Rating documents was withheld under FOIA Exemption 6.

In her Appeal, Ms. Dunham requests that this Office review the withheld portions of the documents that were provided to her and determine whether the FOIA Officer properly withheld them from disclosure to her.

II. ANALYSIS

Exemption 6 of the FOIA protects from disclosure “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6); 10 C.F.R. § 1004.10(b)(6). The purpose of Exemption 6 is to “protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information.” *Department of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982) (*Washington Post*).

In determining whether the performance ratings may be withheld under Exemption 6, we must undertake a three-step analysis. First, we must determine whether a significant privacy interest would be compromised by the disclosure of the record. If no privacy interest is identified, the ratings may not be withheld pursuant to Exemption 6. *Ripskis v. Department of Housing and Urban Development*, 746 F.2d 1, 3 (D.C. Cir. 1984) (*Ripskis*). Second, we must determine whether release of the information would further the public interest by shedding light on the operations and activities of the Government. See *Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 773 (1989) (*Reporters Committee*). Third, we must balance the identified privacy interests against the public interest in order to determine whether release of the information would constitute a clearly unwarranted invasion of personal privacy under Exemption 6. *Ripskis*, 746 F.2d at 3.

We find that substantial privacy interests would be implicated by the release of the employees’ performance ratings. The humiliation that could result from the release of mediocre or poor ratings is apparent. However, the release of even favorable ratings can cause embarrassment, as well as jealousy and possible harassment from employees who receive lesser ratings. On the other hand, release of the ratings would further the public interest to some extent by shedding light on the way in which the government evaluates its employees. We believe that this interest is outweighed, though, by the deleterious effects that disclosure could have on employee morale and workplace efficiency. As the District of Columbia Circuit Court of Appeals stated in *Ripskis*, “Disclosure will be likely to spur unhealthy comparisons among . . . employees and thus breed discord in the workplace,” and “chill candor in the evaluation process as well.” 746 F.2d at 3. In that case, the Court upheld the decision of a lower court that the names of employees were properly redacted under Exemption 6 from personnel evaluation forms provided to a requester. Under these circumstances, in which the names of the rated employees have been released, we find that the FOIA Officer properly determined that the personnel ratings are exempt from mandatory disclosure pursuant to Exemption 6. In addition, we find that release of any comments or recommendations that appear on the Annual Summary Rating documents should also be withheld, because their disclosure would likely reveal the nature of the employees’ performance ratings, if not their actual value.

We have reviewed the information that was withheld from the appellant and have determined that the FOIA Officer segregated and released to Ms. Dunham all information that is not subject to

withholding under Exemption 6. Having found that the FOIA Officer properly withheld personal information regarding employees from the documents it released to Ms. Dunham, we will deny the present Appeal.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by Linda Dunham, OHA Case Number TFA-0286, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: January 16, 2009